IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1504 of 1985

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SOMABHAI B PATEL

Versus

MANJUKUMARI D MEHTA

Appearance:

MR AM RAVAL for Petitioner

MR ARUN H MEHTA for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 10/03/2000

ORAL JUDGEMENT

1. This is a revision application under section 29(2) of the Bombay Rent Act, at the instance of the original defendant-tenant, who was sued by the respondent plaintiff-landlord for a decree of eviction on a number of grounds.

2. The plaintiff-landlord had filed a suit for a decree of eviction on the ground that the tenant had committed breach of terms and conditions of the tenancy by construction of a cattle-shed and Pejari without obtaining permission of the landlord, and had therefore lost the protection of section 12(1) of the Bombay Rent Act. A decree for eviction was also sought specifically under section 13(1)(l) of the said Act on the ground that the tenant has acquired suitable alternate accommodation. An alternate prayer was also made for an injunction restraining the defendant-tenant from obstructing the landlord in constructing a staircase to be constructed upon the open land not rented out to the tenant for the purpose of reaching the first floor of the landlord's premises, which was occupied by the landlord. The trial court dismissed the suit of the landlord for a decree of eviction on the ground that the tenant had not committed breach of any of the terms and conditions of the tenancy, and that the landlord had failed to prove that the tenant had acquired suitable alternate accommodation. The trial court, however, granted the alternate prayer by issuing a prohibitory injunction against the tenant, restraining him from obstructing the landlord in the construction of a staircase as prayed for.

3. Separate appeals were preferred by each of the parties under section 29(1) of the Bombay Rent Act to the lower appellate court. The landlord appealed against the dismissal of his suit so far as the decree of eviction was concerned, and the tenant filed an appeal so far as the grant of alternate relief of prohibitory injunction was concerned.

4. The lower appellate court, on a total reappraisal of the evidence on record, allowed the appeal of the landlord and dismissed the appeal of the tenant by holding that the tenant had committed breach of the terms and conditions by constructing a cattle-shed and Pejari without authorisation, that the tenant had acquired suitable alternate accommodation, and also passed a decree on the ground that the tenant had denied the title of the landlord and had failed to substantiate the denial.

5. The present petitioner-defendant-tenant in the present revision challenges the judgement and decrees in the two appeals. Firstly it may be noted that since the two appeals were separate appeals by separate parties, two separate revisions ought to have been preferred. Admittedly this single and composite revision specifically mentions in the prayer clause that the

judgement and decrees passed in both the appeals should be quashed and set aside. Obviously one revision from two appeals is incompetent or at least would be competent in respect of only one of the appeals. However, I do not propose to dismiss the revision on this ground alone.

6. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Hohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

7. On the facts and circumstances of the case I have been taken through the judgement of the trial court as also the judgement of the lower appellate court, and also through such oral and documentary evidence to which my attention has been drawn.

8. The first question which arises for consideration, as specifically raised by learned counsel for the petitioner, is that even if the finding were to be accepted to the effect that the property on which the tenant had constructed the cattle-shed and Pejari was not rented out to the petitioner, he would at best be deemed not to be a tenant of the said area and could therefore only be called a trespasser in respect of that area. If that be so, the rent court had no jurisdiction to pass a decree of eviction against a trespasser, since this could only be done by a regular civil court.

9. This submission itself is, in my view, based on a misconception of the powers of the rent court in the context of a controversy between a landlord and tenant. It is not as though the landlord has sued the tenant for a decree of possession in respect of the area not rented out to him. It is not as though the plaintiff has sued

the tenant in a rent court for eviction as a trespasser. The crux of the matter is that it is the landlord who had sued the tenant in a rent court for a decree of eviction on the grounds available to the landlord under the provisions of the Bombay Rent Act, and has only incidentally and by way of alternate relief prayed for a prohibitory injunction. It is also pertinent to note that the landlord has neither sued nor has the lower appellate court granted any decree of eviction in respect of the area not rented out to the tenant. Thus, the mere grant of incidental relief restraining the tenant from interfering with the construction of the proposed staircase is a matter which is merely incidental to the substantive suit for a decree of eviction (of the leased premises) on grounds available under the Rent Act. Even if it was otherwise, there cannot be any controversy that the rent court has the necessary powers to deal with, to decide and to grant appropriate relief in a rent suit under the Rent Act, in respect of questions which are incidental to the main points of controversy and the main grounds for relief sought. This principle is well established since long, and it is sufficient to refer to only two decisions of the Supreme court viz. (1) AIR 1953 SC 73 and (2) AIR 1971 SC 1495 (para 13).

10. The lower appellate court has arrived at a finding of fact on a true and correct appreciation of substantial evidence on record that the tenant has constructed a cattle-shed and Pejari and has, therefore, committed breach of the terms and conditions of tenancy. So far as the bare and essential facts are concerned, it is not disputed by the tenant that he has constructed the cattle-shed and Pejari. The tenant has also not disputed that no permission was obtained before such construction. Thus, the only controversy which arises and which has been raised by the tenant is that since the construction has been made, on property which is not specifically rented out to him, it would not be governed by the terms and conditions of tenancy and that therefore section 12(1) of the Rent Act would not apply.

10.1 For this purpose learned counsel for the petitioner seeks to rely upon a decision of this court in the case of Rabari Prabhat Harji Vs. Patel Chandulal Trikamlal, reported at 21 GLR 735. This decision lays down that where the rent note prohibits a tenant from making use of the adjacent land, and in spite thereof the tenant encroaches upon the adjacent land, the prohibition contained as a covenant (the rent note) cannot be said to relate to the land given in tenancy but to the adjacent land, and that therefore it does not create any

obligation regarding the subject matter of tenancy, and can be regarded to be a mere personal obligation, and breach of such personal obligation or personal covenant cannot be equated with breach of conditions of tenancy.

10.2 As against this, learned counsel for the respondent-landlord seeks to place reliance upon a contrary decision of the Supreme Court in the case of Chandulal Trikamlal Vs. Rabri Prabhat Harji, reported at AIR 1996 SC 532. This decision lays down a principle which is diametrically opposite to the decision of this court referred to hereinabove. The Supreme Court specifically held that where the tenant has covenanted that he will not use the land beyond the leased area, such a term constitutes a condition of tenancy, and is not a personal obligation of the tenant. It is an obligation cast upon him in his capacity as a tenant, and if the tenant then commits breach of terms by encroaching upon the adjacent land of the landlord, he is liable for eviction.

11. The lower appellate court has also upset the finding of the trial court by holding that the tenant has acquired suitable alternate accommodation and is, therefore, liable to eviction under section 13 (1)(l) of the Rent Act. There is no dispute that the land bearing survey no.214 situated in village Dehli was purchased by the defendant's sons Kikabhai Somabhai and Maganbhai Somabhai under the registered sale deed at Exh.75 and thereafter it was transferred to the defendant's sons Manilal Somabhai and Maganbhai Somabhai under registered sale deed at Exh.74. There is no controversy as to the state of the evidence that the building of a substantial size (3 galas) is being constructed on the said land thereafter. However, the case of the defendant-tenant is very specific in this regard. According to the defendant, the land was purchased by his sons, and that the construction was made by his sons out of their independent income, and that his sons are residing in the said property and that he has no right or interest therein, because it does not belong to joint family.

11.1 The lower appellate court has rejected this contention for the simple reason that it goes contrary to evidence on record, and that this defence is merely by way of a plea not supported by any evidence. Manjukumari (Exh.23) and Ishwarlal (Exh.45) have both deposed that the defendant is not residing in the suit premises, that he has kept it closed because he has shifted to the newly constructed building and is residing there with his family. Furthermore, the defendant has made material

admissions with regard to the joint family status of his family. He has specifically admitted that his sons are still joint with him as regards residence and food. He neither asserts nor even hints that there has been any partition between himself and his sons. Thus, when it is seen that the defendant is joint in family and joint in food and residence with his sons, a mere assertion that he has no interest in the property merely because it stands in the name of his sons is of no consequence. Joint residence and having food jointly (in the absence of any averment that there has been a partition) necessarily leads to a presumption of the joint status of the family and the character of the property as HUF property. No doubt this is a rebuttable presumption, but no attempt has been made to rebut the same. Neither of the two sons who are supposed to be the individual owners of this property have been examined. No attempt has been made by either of these sons or by the defendant to indicate the source of funds from which the land was acquired or the construction made. Apart from the total absence of evidence by way of rebuttal, there is even the absence of an attempt to make a rebuttal. The lower appellate court was, therefore, justified in holding that the tenant had acquired alternate accommodation.

12. The lower appellate court has also passed a decree for eviction on the ground that the tenant has denied the title of the landlord. The tenant has in his written statement categorically asserted that the property which is the subject matter of lease was merely purchased in the name of Manjukumari, it being suggested that she is a benami holder, whereas the real owner is a person by the name of Sajjanlal. The defendant did not rest content by merely taking such a plea in the written statement. The defendant has reiterated this in his deposition on oath. However, he has failed to substantiate this claim or to justify the allegation that the plaintiff landlord is not the true owner of the property. Obviously, therefore, the lower appellate court was justified in passing the decree for eviction even on this ground.

13. I, therefore, see no substance in the present revision and the same is accordingly dismissed and rule is discharged. Interim relief stands vacated.

14. However, before parting with this matter I am constrained to observe that the learned counsel for the petitioner has argued the matter at great length, entirely at his leisure, over a period of days, inspite of repeatedly being pointed out the constraints of time

and the desirability of brevity in making submissions. Learned counsel for the petitioner has insisted on reading each of the two judgements from end to end and word by word, and repeating his submissions and arguments endlessly. For this reason this revision is dismissed with costs quantified at Rs.1000/-.

15. At this stage learned counsel for the petitioner seeks that the present judgement and order be stayed for a period of 8 weeks in order to approach the Supreme Court. Accordingly it is stayed upto 10th May 2000 with a specific understanding that no further extension shall be granted.

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